



Proprietary Product Request Justifications

Procedure 630-020-007

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Product Evaluation



Review

Definition of a Patented or Proprietary Product:

- A product, specification, or process identified in the plans as a "brand" or trade name.
- A product or a process so narrowly specified that only one provider can meet the specification or requirements.

Applies when State or Federal funds are used on a project.

- When the State or FHWA is not paying for the proprietary product, i.e. using designated funds,
- FDOT Project Manager needs to coordinate with District Local Programs Administrator. (email is sufficient)



What is sole source?

Only one manufacturer/supplier of product or supplier of process



How do I know there is only One?

You don't. You must research

➤ Reviewer:

- The justification should show the research. If it doesn't, ask questions
- No justification, ask the question and include the email response showing alternatives to the project documentation

➤ Initiator:

- Search usual providers for alternatives
- Focus on justification needs when looking for alternatives



Common Situations of Sole Source

- Only one on APL
 - Probably need a Proprietary Product Certification to identify in plans
 - Ask Product Evaluation for assistance
 - Often the product is an alternative to a non-proprietary process identified in the specs, You have limited the choice by telling the contractor to use it.
 - Traffic Operations equipment is often sole source but to use it you must have a Proprietary Product Certification for specific selections
 - There no State-wide approved sole source on the APL at this time



Common Situations of Sole Source

Identification of one product from the APL list

- Requires a Proprietary Product Certification
 - You have limited contractor selection to one

There is only one product from the Local APL and FDOT APL the matches

- Requires a Proprietary Product Certification
 - You have limited contractor selection to one



Common Situations of Sole Source

The Local Agency has submitted a list of product requirement. Some have multiple manufacturers and some have sole source.

- Take each item separately
 - The ones with multiple manufacturers can be approved by normal process
 - The ones with sole source need have a Proprietary Product Certification



Can I combine several products into one Justification?

Yes, But depends on the complexity of the request.

- ▶ Focus on the key needs and features needed for the project.
- ▶ Do they need to work as a system?
- ▶ Are there many common needs shared



Certification Process

1. Initiator submits the request to Department Project Design Manager.
 - Justification and form
2. Project's Design Engineer conducts the review and make recommendations to DDE for approval (in writing).
3. District Design Engineer (DDE) signs the Certification portion of the form when the request is approved and summarizes any special conditions or limitations.
4. The form, complete with signature, and document package will remain with the project documentation.

The Certification form consists of

Proprietary Product Certification

Add Design Approval Request

Edit Design Approval Request

To: _____

Request Type: 15 of 255

Desired Date:

Description:

Justification: 28 of 2000

Geographic Location: 18 of 500

Requested By:

☒ Internal User ☐ External User

[Include Signature](#)

[Include Design](#)



Review: Justification's Basis

1. Synchronization, or
2. Unique Need

Additional Restrictions

- State can approve at Project level only
- For any other Justification reason or more expansive approvals the FDOT is has not been delegated authority.
 - Use another process if applicable, or
 - Send to FHWA for approval after completing process
(State will provide a recommendation and not an approval)



Review: Synchronization Basis

- ▶ Must use one of the following three:
 - ▶ Function
 - ▶ Necessary for satisfactory operation of existing facilities.
 - ▶ Aesthetics
 - ▶ Necessary to match visual appearance of existing facilities.
 - ▶ Logistics
 - ▶ Interchangeable with existing inventory.

Synchronization Basis Continued

In addition, may use any of the follow:

- Lifecycle

- Relative age of existing system and remaining project life.

- Size/Extent


- Relative cost of proprietary element compared to replacing the synchronization elements.
 - This can include cost of training maintenance personnel.

If you need more on this
procedure, contact Product
Evaluation and request
Proprietary Product
Certification Introduction
Training





Justification Content



Once you have selected and identified your reasons, each one must be justified, supported by additional site specific facts, showing that it is indeed true.



Justifications for ITS Devices

Justification Documentation Requirements

630-020-005-a

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reasonable and necessary to fulfill the project need. The assigned Project Manager shall ensure that the documentation includes, but is not limited to, the following information:

- 1) Description of the project need for the proprietary product,
- 2) Factual and technical supporting evidence for Synchronization (see **Section 4.1**) or Unique need (see **Section 4.2**),
- 3) Explanation how the evidence links it to the project need, and
- 4) Factual and technical supporting evidence that no alternatives are available.



Intent of the Justification

1. **(Primary Purpose)** Prove that using a single product benefits the public in spite of restricting competition.
2. Explain the initiator's choice of product.



Justification Length

Depends on the total cost of the items relative to project:

- If cost is low then a simple justification documentation is acceptable.
 - This may consist of a few paragraphs, each with a few sentences.
- If cost is high, this may be an extensive document.
- Use your judgment.
- Evaluators can ask for more information.

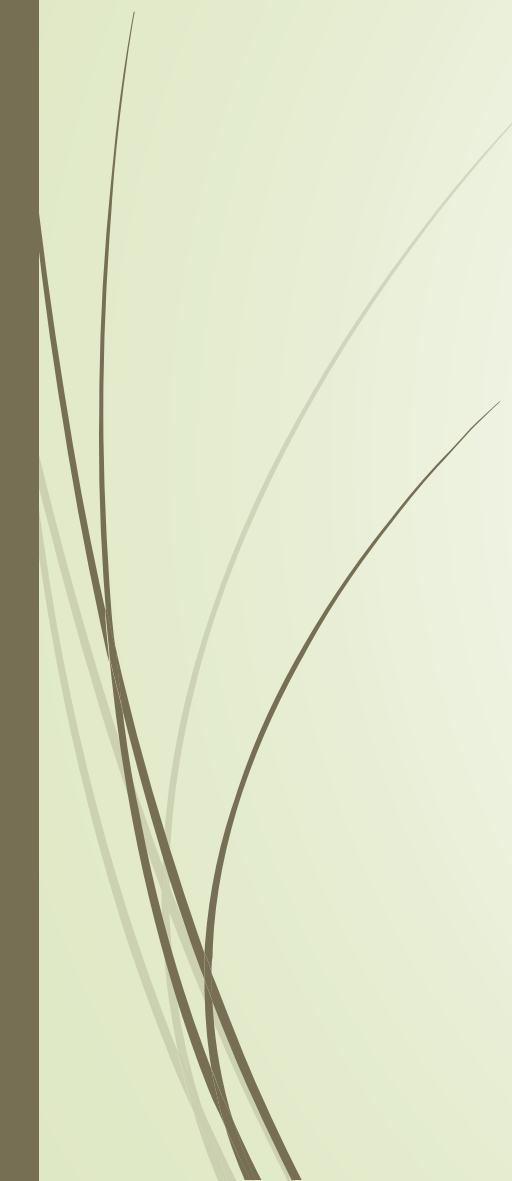
Typical Project Example

- New Signalized Intersection on the State System within a Maintaining Agency Jurisdiction
- Needs a specific Traffic Signal Controller





1. Start with a clear description of the product to be procured.

- Serves the purpose of an Executive Summary
 - Provides the reviewing and approving official with a better understanding of the scope, magnitude and complexity of the requirement.
 - If part of the selection criteria, include the estimated cost of the procurement and total funding profile for all the years that it will be used.
 - Cite the authority that is creating limitations
- 

671 Traffic Controllers

Product Type – Controller – NEMA TS2 Type 1

Econolite, Controller - NEMA TS2 Type 1

Supplier: Econolite

- Model Number: ASC/3-1000
- APL Certification Number: 671-016-007

McCain, Controller - NEMA TS2 Type 1

Supplier: McCain, Inc.

- Model Number: XATC eX Type 1
- APL Certification Number: 671-016-011
- Comment: Note: Evaluated firmware version 1.3.0.4057 with Flashing Yellow Arrow Operation

Peek Traffic , Controller - NEMA TS2 Type 1

Supplier: Peek Traffic Corp.

- Model Number: 3000 TS2-1
- APL Certification Number: 671-016-001
- Comment: (PEEK)

Peek Traffic , Controller - NEMA TS2 Type 1

Supplier: Peek Traffic Corp.

- Model Number: 3000E
- APL Certification Number: 671-016-004
- Comment: Note: Re-evaluated new firmware 3.7.3 build 420 with Flashing Yellow Arrow Operation

Peek Traffic , Controller - NEMA TS2 Type 1

Supplier: Peek Traffic Corp.

- Model Number: ATC-1000
- APL Certification Number: 671-016-009

Siemens Traffic Solutions, Controller - NEMA TS2 Type 1

Supplier: Brown Traffic Products, Inc. (formally Siemens and Eagle)

- Model Number: EPAC M-51
- APL Certification Number: 671-016-008
- Comment: (EAGLE)

Trafficware Group, Controller - NEMA TS2 Type 1

Supplier: Trafficware Group, Inc.

- Model Number: 980-A2100
- APL Certification Number: 671-016-005
- Comment: Note: Re-evaluated new firmware v61.4a with Flashing Yellow Arrow Operation

Trafficware Group, Controller - NEMA TS2 Type 1

Supplier: Trafficware Group, Inc.

- Model Number: 980 ATC Type 1
- APL Certification Number: 671-016-008
- Comment: Note: Evaluated firmware version 76.1a Build 2627 with Flashing Yellow Arrow Operation

Trafficware Group, Controller - NEMA TS2 Type 1

Supplier: Trafficware Group, Inc.

- Model Number: ATC Type 1
- APL Certification Number: 671-016-010
- Comment: Note: Evaluated firmware version 76.6B Build 3060 with Flashing Yellow Arrow Operation



If Not using an APL product, Still need
to obtain a permit

- ▶ This process does not replace any other requirements



Example Part 1 continued

The requirement is to provide (**product name**)
at (**location**).

This will allow the office of (**requesting agency name**)

to accomplish (**agency primary mission objective**).




Example Part 1 Continued

The requirement is to provide *three Best Manufacturer, Controllers - NEMA TS2 Type 1 Assemblies, APL #671-016-00X, at 56th and 3rd in City of Pleasantville.*

This will allow the City's Traffic Signal Maintenance Operations Office to accomplish timing changes, routine maintenance and repairs to the equipment in a cost effective and timely manner

in accordance with the Maintaining Agency Agreement with the Florida Department of Transportation.



2. Explain the System(s)/Program(s) identified in the introduction

This is the most important part of the justification

This is where you are explaining the public benefit (primary purpose of justification)

- Identify the unique features and how/why a single product feature is a key component of that system/program
- Identify all the specialized features required for synchronization, or the unique features



Example Project Justification Part 2

Common Justification

- Technical characteristic - this equipment must be supportable by City of Pleasantville.
- Explanation - At the end of construction, the maintenance and operations of the equipment will be turned over to City of Pleasantville.

Problem – still doesn't explain why the Best Manufacturer controller is the only controller that can be used or why the city cannot use anything else.

Synchronizaton

- Must use at least one of the following:
 - Function
 - Necessary for satisfactory operation of existing facilities.
 - Aesthetics
 - Necessary to match visual appearance of existing facilities.
 - Logistics
 - Interchangeable with existing inventory.

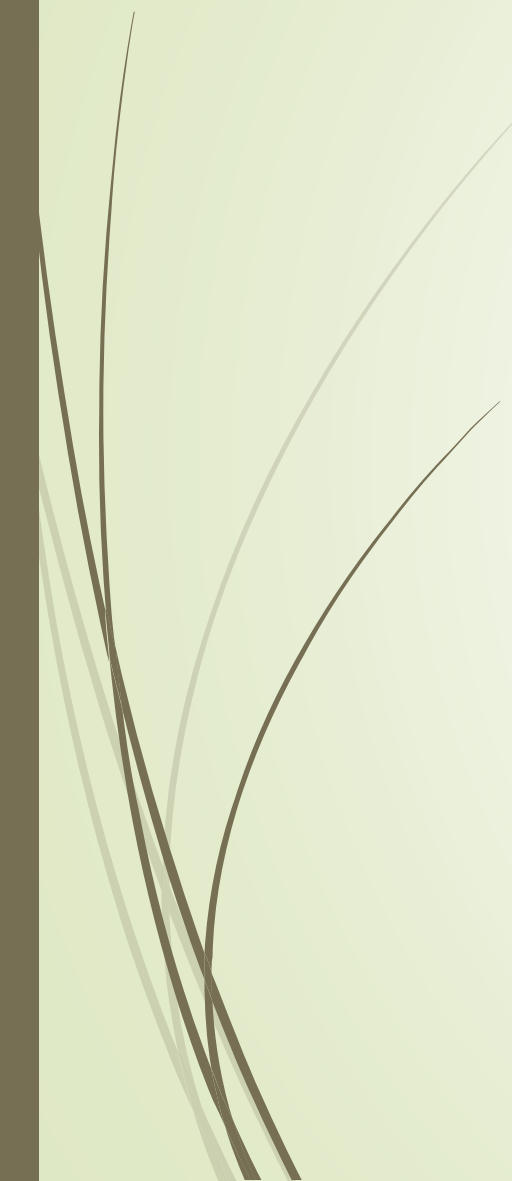
Better Justification Part 2

- Technical characteristic 1 - this equipment must be maintainable by the City of Pleasantville.
- Explanation - At the end of construction, maintenance and operations of the equipment will be turned over to City of Pleasantville. The City of Pleasantville has an integrated system that allows information and alarms from traffic controllers to send messages to the control room and allows for tracking of performance measures. Under the Maintaining Agency Agreement, the City must be capable of responding on-site within an agreed upon timeframe when a signal malfunctions to repair or replace. The city has only trained its maintenance employees in the installation and repair of the Best Manufacturer controller. The training requirements for each type of controller are extensive and the City does not have the resources to train existing personnel in another system not to add additional personnel. Additionally, extra controllers and components must be in inventory to allow the City to respond when a signal malfunctions to repair or replace it. The increase in budget required to maintain two different traffic controllers including training , personnel and inventory space would increase the Maintenance budget by 43%. There are no plans by the City to do this in the next 3-5 years.
- Add supporting documents: Maintaining Agency Agreement, Training Program for staff, Training requirements documentation, Inventory documentation control system, Budget documentations identifying constraints, etc..
- Go on to explain each of the other technical characteristics 2, 3, ...
 - Requirements in the Maintenance Agreement.

- The analysis provided in the request should be based on factual, verifiable data, with assumptions clearly identified. A PIF should be based on tangible, quantifiable benefits, such as reduced life-cycle costs or reduction in inventory.
 - For example, increased durability can offset higher initial costs to the point that the higher cost of a certain sheeting material may be justified if its life-cycle costs yield the lowest overall cost.
- The request for a PIF should also clearly identify other contractual or performance implications that would result from approval of the request.
 - For instance, if a specific product is approved for guide sign legends, then it should be clear whether the manufacturer seeks to impose restrictions on the selection of the background sheeting through the manufacturer warranty.
- A STA or local agency may include past performance as an evaluation criterion in competitive bids, or may establish warranty provisions within the requirements for retroreflective sheeting to protect against material failures. The durability of a product, resulting in a proven longer service life, may be the basis of an economic analysis that supports the request for a PIF based on lower service-life costs.
- The Division Administrator should carefully review the analysis that provided the basis for the certification and determine if the certification is supported by clearly articulated facts and credible, well described research findings and/or operational experience.

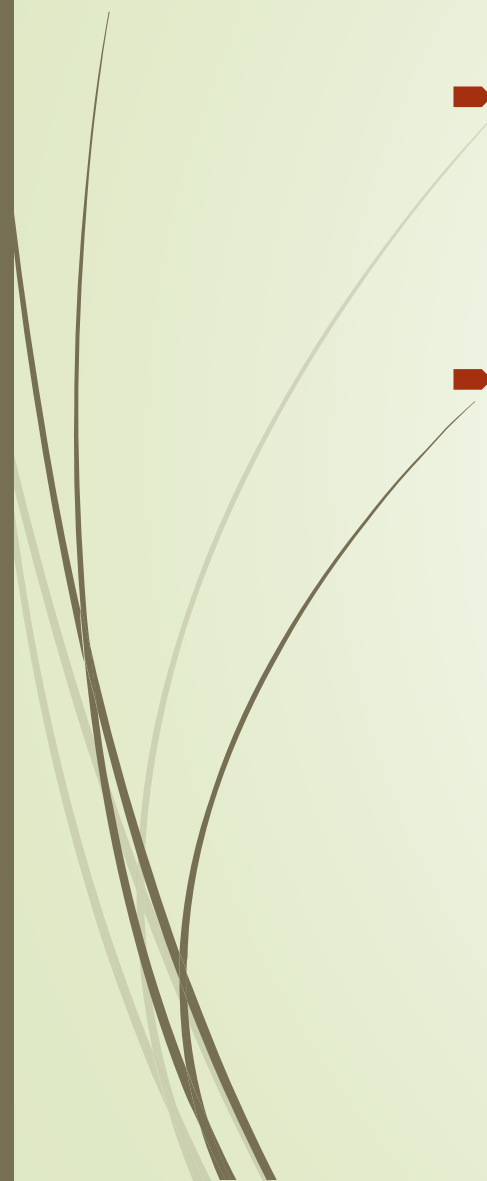


Justification should contain the following elements

- A description of how the proprietary product requirement will benefit the public.
 - What unique needs are being addressed that result in no equally suitable alternate, e.g., high percentage of older population?
 - Are there identified safety locations or critical decision points that would justify a higher standard of retroreflectivity?
 - An evaluation of the pool of potential products, and a description of why these products cannot meet the STA's or local agency's needs.
 - An estimate of additional costs incurred as a result of this proprietary product requirement.
- 



Assumptions should be identified

- Direct safety benefits measured in terms of crashes are often not quantifiable. Thus, alternative metrics, such as increased legibility distance and improved driver acquisition times, may be used to support a determination that no suitable alternate exists.
 - Research results providing similar findings in support of a specific request may be used.
- 



Bigger is not Better

- Products appear from time to time that are new and innovative. Just because they are new, does not mean that it is the only way to support the need
 - Perhaps an experimental request is better than a Proprietary Product Certification.
- The evaluation for the need identified should be documented.
- Do not make unsupportable statements



Additional Comments for Part 2

- ▶ Local APL equivalents require technical justification
- ▶ Lack of advance planning that results in limited availability or concerns regarding funding availability or expiration of funds are not acceptable justifications. In cases where a compelling and unusual urgency exception is cited, you cannot use this process: submit to FHWA.
- ▶ Do not assume 'everyone knows'. It is better to add more than you need.

Failure to justify the need will negate the entire request.

- ▶ The product selection is secondary to the justification of the need.

Examples of Statements to be Defended

- ▶ *Our city needs extra protection because of the number of hurricanes hitting the area –*
 - ▶ Could show a chart with the number of hurricanes and intensity over the years and how many hit this area above other coastal areas
 - ▶ Note: Only defends the need for extra protection, not the device
- ▶ *We have our own APL List for product selection -*
 - ▶ If similar to FDOT APL : Need to explain basis of testing that is different from APL Spec. Include factual/data based documentation to support the reason for importance.
 - ▶ If no FDOT APL equivalent: Explain basis of testing criteria. Include factual/data based documentation to support the reason for importance.
- ▶ *Our contracts require products to meet (insert) requirement –*
 - ▶ Explain basis of contract requirement. Include factual/data based documentation to support the reason for importance.



Section 3: Why each part of System/Program is Critical to the project

- Reason for this particular product to be included into the project
 - How this reason critical to the project
- 



4. Factual and Technical Evidence that No Alternative Exists (Reasonable)

Describe search for alternatives and why potential alternative fail

- This should be written with the understanding that it is based on technical or engineering. Plain language is not required and should not be used.
- Activities should include as many options as possible
 - Examples:
 - APL
 - Market search
 - Alternative technical solutions (ex: using an adapter)
 - Cost/Benefit Analysis
- This should be an explanation of each activity, not a list.
- Include dates of activities, dates of data used – how old is the data?



Section 4 cont: Include Search for Alternative and other supporting facts

Alternative solutions:

- There are no other supported devices or software on the Market that would substitute the requested product
 - Review of all APL products was conducted on 1/1/2015. Alternate Physical devices are not available on the APL. The Software cannot be altered to perform the function. Of the existing APL approved products, no manufacturer offers a compatible program.
- Note: these are only introductory sentences - a Justification must expand on this with detail and supporting documentation.

Provides a section to include other information that does not fit into the previous sections.

Example Part 4

Alternative Features:

- ▶ Other APL products do not have the necessary software interface
 - ▶ Ex: Expand on how the alternative products, Product A and Product B, have compatible software but these devices are not supported by the City maintenance office training and inventory.
- ▶ Product C and D could be used, but using products from a different manufacturer voids the system warranty.
 - ▶ Identify section of warranty that states this and attach a copy of the warranty to prove statement.



Optional Section 5: Any other information/Appendix

- Add anything else that may be pertinent to the to justification
- Make this your Appendix area for adding the additional documents
 - System Warranty, Maintenance Agreement, Research Reports referenced, etc.

Technical Reviewer

- Review each feature and project needs. Ask for additional information if necessary.
- Identify individual features for disapproval and subsequent exclusion.
- Review Alternatives. Identify if any alternatives will meet all the features if the features for disapproval are excluded.
- Include features, products and alternatives not identified in justification based on expert knowledge. Document resulting correspondence with Agency.
- If one or more alternatives are now available (two or more products are available for bidding), discuss with initiator and request a withdrawal of request. Modify plan requirements to exclude features.
- If no alternatives are available after features for disapproval are excluded, identify exclusions and proceed with approval process.




Notes

- Missing information – Request more detail.
- Better to have too much info



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Product Evaluation will provide training for
Proprietary Products Certification Introduction
and this course, Proprietary Products Justifications on request.
Please contact our office.